

SENATE RECORD VOTE ANALYSIS

104th Congress
2nd Session

Vote No. 257

July 31, 1996, 11:45 am
Page S-9222 Temp. Record

NUCLEAR WASTE/Utility Ownership of Stored Waste

SUBJECT: Nuclear Waste Policy Act of 1996 . . . S. 1936. Domenici motion to table the Wellstone modified amendment No. 5037.

ACTION: MOTION TO TABLE AGREED TO, 83-17

SYNOPSIS: As introduced, S. 1936, the Nuclear Waste Policy Act of 1996, will provide for the interim and permanent storage of spent nuclear fuel and high-level radioactive waste. A short-term facility, administered by the Department of Energy (DOE), will begin accepting nuclear waste no earlier than December 31, 1998 and no later than November 30, 1999, at a site at Yucca Mountain, Nevada. By December 31, 2002, the DOE will apply for authorization to construct a permanent repository at the same site, provided that licensing regulations can be met. Spent fuel and waste from the Federal Government and from commercial nuclear power plants will be transferred from temporary storage sites located in 41 States to the Yucca Mountain site.

The Wellstone modified amendment would prevent the Federal Government from accepting title to spent nuclear fuel or high-level nuclear waste generated by a commercial nuclear power reactor unless it determined that accepting title to the fuel or waste was necessary to enable it to protect adequately the public health or safety, or the environment. To the extent that the Federal Government was responsible for personal or property damages arising from spent fuel or waste in its possession, it would bear liability regardless of whether it held title.

Following debate, Senator Domenici moved to table the Wellstone amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

The United States Government has a contractual responsibility to accept title to commercial nuclear waste. The Wellstone amendment would unilaterally abrogate that responsibility. Congress has no right to pass such a law. As a matter of basic, fundamental law, and justice, the United States cannot vest rights in citizens or corporations by contract and then break those

(See other side)

YEAS (83)				NAYS (17)		NOT VOTING (0)	
Republican (53 or 100%)		Democrats (30 or 64%)		Republicans (0 or 0%)	Democrats (17 or 36%)	Republicans (0)	Democrats (0)
Abraham	Helms	Biden	Johnston		Akaka		
Ashcroft	Hutchison	Bingaman	Kennedy		Baucus		
Bennett	Inhofe	Bradley	Kerrey		Boxer		
Bond	Jeffords	Breaux	Kerry		Bryan		
Brown	Kassebaum	Bumpers	Kohl		Byrd		
Burns	Kempthorne	Conrad	Lautenberg		Daschle		
Campbell	Kyl	Dodd	Levin		Exon		
Chafee	Lott	Dorgan	Lieberman		Feingold		
Coats	Lugar	Feinstein	Mikulski		Harkin		
Cochran	Mack	Ford	Moseley-Braun		Leahy		
Cohen	McCain	Glenn	Nunn		Moynihan		
Coverdell	McConnell	Graham	Pryor		Murray		
Craig	Murkowski	Heflin	Robb		Pell		
D'Amato	Nickles	Hollings	Sarbanes		Reid		
DeWine	Pressler	Inouye	Simon		Rockefeller		
Domenici	Roth				Wellstone		
Faircloth	Santorum				Wyden		
Frahm	Shelby						
Frist	Simpson						
Gorton	Smith						
Gramm	Snowe						
Grams	Specter						
Grassley	Stevens						
Gregg	Thomas						
Hatch	Thompson						
Hatfield	Thurmond						
	Warner						

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

contracts. Though we should not even have to argue the point, we give our colleagues the following quote from the Supreme Court's Winstar decision of July 1, 1996: "The Federal Government, as sovereign, has the power to enter contracts that confer vested rights, and the concomitant duty to honor those rights . . . If we allowed the government to break its contractual promises without having to pay compensation, such a policy would come at a high cost in terms of increased default premiums in future government contracts and increased disenchantment with the government generally." In addition to having a contractual responsibility to take title to commercial nuclear waste, the United States also has the contractual responsibility to begin taking it no later than July 31, 1998. The Court of Appeals for the District of Columbia definitively affirmed that responsibility on July 23 of this year.

Nuclear power plants, for their part of the contract, assess a fee on their ratepayers to pay for the building of a permanent repository. So far ratepayers have put about \$12 billion into the building fund. In so doing, they have lived up to their end of the bargain, and in so doing, they have also given a free ride to all other electricity users in the United States. Senators are prone to note that money is fungible. So is electricity. Electricity is bought and sold among utilities. When one turns on a light switch, the electricity to light the bulb may be generated by the local power company, or part or all of it may come from a company in a neighboring State, or even a distant State. Electricity is bought and sold and shifted around the country as part of an enormous power grid of which few people are even aware exists. Everyone uses nuclear power, which provides 22 percent of the Nation's electricity. Further, even if the grid did not exist, the fact that some jurisdictions used nuclear power would still serve to lessen greatly the demand, and thus the price, for electricity generated by fossil fuels. Even further, using electricity lowers the use of fossil fuels, which pollute the environment to everyone's detriment. In Minnesota, the home State of the author of this amendment, 31 percent of the electricity generated comes from nuclear power. If fossil fuels were used instead, each year an extra 118,000 tons of sulfur dioxide and 53,000 tons of nitrogen oxide would be pumped into the air. No other alternatives exist, save not using power. That is not an option too many people would be pleased with in a sub-zero, dark Minnesotan winter.

Ratepayers of utilities that produce nuclear power pay a tax on the power that is generated. That tax is not on the waste--it does not go up each year as the amount of waste accumulates. Once they stop producing nuclear power, they are no longer responsible for paying the tax. Eventually, as more and more nuclear power plants are decommissioned, no utilities will be left paying into the fund. The Federal Government also pays into the building fund, because it is the largest producer by far of nuclear waste and it will store its nuclear waste in the repository as well. The Wellstone amendment would make ratepayers keep title to nuclear waste, in violation of their contractual rights, and it would do so in an effort to make them pay additional taxes long after their utilities have stopped producing nuclear waste.

In our estimation, ratepayers of nuclear power plants have already been abused by being made to pay the costs of building a repository for nuclear waste even though all Americans benefit from nuclear power. The building of that repository has already been delayed endlessly through no fault of those ratepayers. Now, because of those delays, it is necessary to build an interim storage facility. We imagine that the eventual cost of building a permanent facility will be greater than originally estimated, due to bureaucratic reluctance to move forward and to constant harassing suits of those people and groups who want to prevent it from ever being built. The ratepayers have lived up to their end of the bargain; we are not about to break the United States' end in the hope of squeezing more money out of them. Therefore, we strongly oppose the Wellstone amendment.

Those opposing the motion to table contended:

Under current law, title for nuclear waste from commercial power plants will transfer from those plants to the Federal Government when the Federal Government puts it in a permanent repository. The Federal Government is also required to accept by January 31, 1998 the waste that has been accumulating at nuclear plants around the country. A recent court decision found that the Government cannot be held liable for not removing any waste until the January 31, 1998 deadline is reached. It also found that it is not illogical for the Government to start disposing of nuclear waste by the deadline but not to accept title to it "until a later date." This distinction is very significant, and forms the basis for offering the Wellstone amendment. Once title transfers to the Federal Government, utilities will be totally free of any liability. If it turns out that they have not paid enough to cover the costs of the repository, it will be impossible to make them pay more. The Department of Energy estimates that enough has been and will be collected in taxes to pay for the costs of the permanent repository for the next 88 years (at which time it will be full and will be sealed). However, the Nuclear Waste Technical Review Board suggests that there may be a \$3 billion to \$5 billion shortfall, and the General Accounting Office estimated in 1990 that there may be a \$2.4 billion shortfall now, and that eventually that number may climb as high as \$77 billion. To save the taxpayers from footing the bill, the Wellstone amendment would forbid the United States Government from taking title to that nuclear waste unless necessary to protect public health, public safety, or the environment. Thus, even if the Federal Government held the waste, the utilities would keep having to pay storage costs. As a simple matter of fairness, we support the Wellstone amendment.